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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/440,260	11/15/1999	ARTHUR JOST	GEN-067	2733

7590 12/22/2003

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EXAMINER
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KOENIG, ANDREW Y

ART UNIT	PAPER NUMBER
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2611

DATE MAILED: 12/22/2003

10

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action**

Application No.

09/440,260

Applicant(s)

JOST ET AL.

Examiner

Andrew Y Koenig

Art Unit

2611

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 05 November 2003 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

**PERIOD FOR REPLY [check either a) or b)]**

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.
- b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on \_\_\_\_\_. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☐ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
  - (b) ☐ they raise the issue of new matter (see Note below);
  - (c) ☐ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
  - (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_

3. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
4. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☐ will not be entered or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1-36.

Claim(s) withdrawn from consideration: \_\_\_\_\_

8. ☐ The drawing correction filed on \_\_\_\_\_ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). \_\_\_\_\_
10. ☐ Other: \_\_\_\_\_



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Continuation of 5. does NOT place the application in condition for allowance because: The applicant's arguments regarding the prior art rejections are not persuasive.

The applicant argues that Caporizzo does not teach or suggest a "system controller automatically determining which upstream plant of a plurality of upstream plants transmits a first message to said system controller from a particular set top terminal." The examiner disagrees; Caporizzo teaches transmitting messages from the set top terminal to the headend (col. 2, ll. 35-38), wherein the transmission is initiated by either the headend or set top terminal (col. 5, ll. 4-23). Within the messages, the headend receives error rate information from the set top terminals. Clearly, identification of the set top terminal is given to the headend in order to identify one or more households with problems (col. 2, ll. 3-5). From that information, the headend can use the database in order to identify the equipment associated with the one more users. Whereas, the examiner recognizes that the actual identification number 217784 is not explicitly taught by Caporizzo, Caporizzo teaches automatically determining which upstream plants transmits a first message.

Further, the applicant argues that Caporizzo does not teach or suggest, "identifying a downstream plant associated with the upstream plant that transmits said first message from the set top terminal." The examiner disagrees; as discussed above some form of identification is associated with a set-top terminal. Consequently, from that received identification, Caporizzo can identify a downstream plant associated with the upstream plant that transmits the first message from said set top terminal in that the database information at the headend clearly contains that information.

Regarding claims 3, 13, and 22, the applicant argues that "assigning attributes for said set-top terminal based on said location of said set-top terminal" clearly implies that set-top terminal at different locations will be assigned different attributes, i.e., attributes vary with location. The examiner disagrees; first, there is no recitation of different attributes, just merely assigning attributes for the set top terminal based on the location. The type of attribute is given the broadest reasonable interpretation, which could be location information or pay services. Accordingly, by designating a user for a pay service (as taught by Caporizzo) an attribute must be assigned in order to properly display the programming and preventing unauthorized users from viewing the same program. Whereas it is recognized that the invention is not necessarily taught by Caporizzo, the claims are subject to interpretation and are broader than that argued. Further, the applicant argues that there is no differentiating "based on" location in that Caporizzo teaches, "based on" the subscriber signing up for and paying for those services. The examiner disagrees; by Caporizzo teaches based on the subscriber signing up for and paying for those services, the location is inherent to these transactions in order to authorize the proper terminal.

Regarding claim 28, the applicant argues that Caporizzo fails to teach or suggest selling a set-top terminal and "connecting said set-top terminal to said cable television system without advance note to operators of said cable television system." The examiner disagrees; the applicant has made no specific argument to claim 28. The examiner notes that the discussion of "selling a set-top terminal" has been addressed in the discussion of claim 25, and "connecting said set-top terminal to said cable television system without advance note to operators of said cable television system" has been addressed in the discussion of claim 26.

Regarding claims 25 and 28-36, claims 25 and 28-36 are rejected under 35 USC 112- first paragraph. The applicant argues that "selling a set-top terminal" is supported in the disclosure as originally filed. In light of the applicant's arguments, the rejection under 35 USC 112 has been withdrawn.